

94-090904

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Recording Requested By:

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Official Records
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Santa Barbara
Kenneth A Pettit
Recorder

When Recorded, Mail To:

12:06pm 19-Dec-94

PUBL BB 11

Department of Toxic Substances Control
Site Mitigation Branch
1011 N. Grandview Avenue
Glendale, CA 91201

Southern California Gas Company
Post Office Box 3249
Terminal Annex
Los Angeles, CA 90051-1249

COVENANT
TO RESTRICT THE USE OF
THE SOUTHERN CALIFORNIA GAS COMPANY
FORMER MANUFACTURED GAS PLANT SITE
(SANTA BARBARA BASE)
(CONSENT ORDER HSA 90-010)

This Covenant and Agreement ("Covenant") is made on the 28TH day of NOVEMBER, 1994, by the Southern California Gas Company ("Covenantor"), who is the owner of record of certain property situated in the City of Santa Barbara, County of Santa Barbara, State of California, its legal description is the Eastern Half (226') of Block 281, within Section 14, T4N, R27 W, (the "Site") described in Exhibit "A" attached hereto and incorporated herein by reference, and by the Department of Toxic Substances Control ("Department") with reference to the following facts:

- A. The Site, formerly a manufactured gas plant site, contains hazardous substances, resulting from those operations during the early part of the twentieth century.
- B. The former manufactured gas plant was operated by Covenantor and others. The Site occupies approximately two acres in the City of Santa Barbara and currently is owned and used as the Santa Barbara Base by Covenantor. Adjacent land use is primarily light industrial and commercial including a building supply outlet and an industrial linen service. The nearest residence is located approximately two blocks away from the Site.
- C. Results of the Remedial Investigation (RI) conducted at the Site indicate that the primary contaminants associated with

1 gas plant by-products are polycyclic aromatic hydrocarbons
2 (PAHs), cyanide and metals. The Department considers the PAHs
3 to be the contaminant of primary concern, since some PAHs are
4 carcinogenic or potentially carcinogenic.

5 D. After consideration of all practical remedial action
6 alternatives, the conclusion reached in the Remedial Action
7 Plan (RAP) for the Site was that excavation of selected
8 on-site soils and thermal desorption of those soils was the
9 preferred remedial alternative. Soils containing lead were
10 excavated and disposed of at an appropriate landfill.

11 E. Based on fate and transport modeling of groundwater movement
12 at the Site, the potential for offsite migration of PAHs in
13 groundwater is exceedingly low. Groundwater monitoring wells
14 were installed within the shallow zone of the Santa Barbara
15 Groundwater Basin. Groundwater from the shallow zone is not
16 used as a drinking water source in the Santa Barbara area.

17 F. The remediation of the Site which has been completed pursuant
18 to the RAP has reduced health risks to an acceptable level as
19 defined by regulatory standards. Groundwater monitoring will
20 continue at the Site for two years.

21 G. Covenantor desires and intends that in order to further
22 protect the present and future public health and safety and
23 the environment, the Site shall be used in such a manner so as
24 to avoid potential harm to persons or property which may
25 result from hazardous substances deposited on the Site and
26 which were identified in the RI and addressed in both the
27 Feasibility Study and the RAP. To this end, the restrictions
in this document are intended to assure that the property is
not used for purposes that could cause individuals to come in
contact with the remaining contaminants on the Site.

ARTICLE I GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets
forth protective provisions, covenants, restrictions, and
conditions (collectively referred to as "Restrictions", upon and
subject to which the Site and every portion thereof shall be
improved, held, used, occupied, leased, sold, hypothecated,
encumbered, and/or conveyed). Each and all of the Restrictions
shall run with the land and pass with each and every portion of the
Site and shall apply to and bind the respective successors in
interest of Covenantor. Each and all of the Restrictions are
imposed upon the entire Site unless expressly stated as applicable
to only a portion of the Site. Each and all of the Restrictions
are imposed pursuant to Sections 25355.5 and 25356.1 of the
California Health and Safety Code and run with the land pursuant to

1 Section 25355.5. Each and all of the Restrictions are enforceable
2 by the Department.

3 1.02 Concurrence of the Owners Presumed. All purchasers,
4 lessees, or possessors of any portion of the Site shall be deemed
5 by their purchase, leasing or possession of the Site to be in
6 accord with the foregoing and to agree for and among themselves,
7 their heirs, successors, and assignees, and the agents, employees,
8 and lessees of the purchasers, lessees or possessors, or their
9 heirs, successors, and assignees, that the Restrictions herein
10 established must be adhered to for the benefit of future Owners and
11 Occupants and their interest in the Site shall be subject to the
12 Restrictions contained herein.

13 1.03 Incorporation Into Deeds and Leases. Covenantor
14 desires and covenants that the Restrictions set out herein shall be
15 incorporated by reference in each and all deeds and leases of any
16 portion of the Site.

17 ARTICLE II 18 DEFINITIONS

19 2.01 Department. "Department" shall mean the California
20 Department of Toxic Substances Control and shall include its
21 successor agencies, if any.

22 2.02 Improvements. "Improvements" shall mean all buildings,
23 roads, driveways, regradings, and paved parking areas, constructed
24 or placed upon any portion of the Site.

25 2.03 Occupants. "Occupants" shall mean those persons
26 entitled by ownership, leasehold, or other legal relationship to
27 the exclusive right to occupy any portion of the Site.

28 2.04 Owner. "Owner" shall mean the covenantor or its
29 successors in interest, including heirs, and assigns, who hold
30 title to all or any portion of the Site.

31 ARTICLE III 32 DEVELOPMENT, USE, AND CONVEYANCE OF THE SITE

33 3.01 Restrictions On Use. Covenantor promises to restrict the
34 use of the Site to industrial, manufacturing, and utility uses.
35 The Site shall not be used, absent Department approval, for
36 residential purposes, schools, child care facilities, convalescent
37 homes and/or any other facility for full time human habitation. If
any person wishes to use the Site for purposes of human habitation,
the Department may require further investigation, including, but
not limited to, evaluation of the risk to occupants of such
facilities, feasibility or construction of such facilities, and the

1 impact of construction of such facilities on the surrounding
2 community.

3 3.02 Maintenance. Owner shall maintain the Site pavement on
4 a regular basis to prevent incidental contact with potentially
5 contaminated soil. For the same purpose, the owner shall maintain
6 approximately ten (10) inches of topsoil on all unpaved areas of
7 the site.

8 3.03 Conveyance of Site. The Owner or Owners shall provide a
9 thirty (30) day advance notice to the Department of any sale,
10 lease, or other conveyance, excluding encumbrances, of the Site or
11 an interest in the Site by a third person. The Department shall
12 not, by reason of the Covenant, have authority to approve,
13 disapprove, or otherwise affect any sale, lease, or other
14 conveyance of the Site, but nothing herein shall prevent the
15 Department from enforcing the provisions of the Covenant.

16 3.04 Enforcement. Failure of the Owner to comply with any of
17 the requirements, as set forth in paragraphs 3.01 and 3.02, shall
18 be grounds for the Department, by reason of the Covenant, to
19 require that the Owner modify or remove any Improvements
20 constructed in violation of that paragraph. Violation of the
21 Covenant shall be grounds for the Department to file civil and
22 criminal actions against the Owner as provided by law.

23 3.05 Notice in Agreement. All Owners and Occupants shall
24 execute a written instrument which shall accompany all purchase,
25 lease, sublease, or rental agreements relating to the Site in
26 compliance within the requirements of California Health and Safety
27 Code Section 25359.7. The instrument shall contain the following
statement:

"The land described herein contains hazardous substances
associated with the former operation of a manufactured
gas plant. Such conditions render the land and the
owner, lessee, or other possessor of the land subject to
requirements, restrictions, provisions, and liabilities
contained in Chapter 6.5 and Chapter 6.8 of Division 20
of the Health and Safety Code. This statement is not
declaration that a hazard exists. A Covenant to Restrict
the use of said land has been recorded and is applicable
to said land."

ARTICLE IV VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any
Occupant of the Site or any portion thereof may apply to the
Department for a written variance from the provisions of this
Covenant. Such application shall be made in accordance with

1 Section 25233 of the California Health and Safety Code.

2 4.02 Termination. Any Owner or, with the Owner's consent, any
3 Occupant of the Site or a portion thereof may apply to the
4 Department for termination of the restrictions as they apply to all
5 or any portion of the Site. Such application shall be made in
6 accordance with Section 25234 of the California Health and Safety
7 Code.

8 4.03 Term. Unless terminated in accordance with paragraph
9 4.02 above, by law or otherwise, this Covenant shall continue in
10 effect in perpetuity.
11

12 **ARTICLE V**
13 **MISCELLANEOUS**

14 5.01 No Dedication Intended. Nothing set forth herein shall
15 be construed to be a gift or dedication, or offer of a gift or
16 dedication, of the Site or any portion thereof to the general
17 public or for any purposes whatsoever.

18 5.02 Notices. Whenever any person gives or serves any notice,
19 demand, or other communication with respect to this Covenant, each
20 such notice, demand, or other communication shall be in writing and
21 shall be deemed effective (1) when delivered, if personally
22 delivered to the person being served or to an officer of a
23 corporate party being served or official of a government agency
24 being served, or (2) three (3) business days after deposit in the
25 mail if mailed by United States mail, postage paid certified,
26 return receipt requested:

27 To: Southern California Gas Company
Environmental Affairs Analyst
Post Office Box 3249
Terminal Annex
Los Angeles, California 90051-1249

28 Copy To: Department of Toxic Substance Control
29 Site Mitigation Branch
30 1011 N. Grandview Avenue
31 Glendale, California 91201

32 5.03 Partial Invalidity. If any portion of the Restrictions
33 set forth herein or terms is determined to be invalid for any
34 reason, the remaining portion shall remain in full force and effect
35 as if such portion had not been included herein.

36 5.04 Article Headings. Headings at the beginning of each
37 numbered article of this Covenant are solely for the convenience of
the parties and are not a part of this Covenant.

1 5.05 Recordation. This Covenant shall be executed by the
2 Covenantor and by the Site Mitigation Branch Chief, Region 3,
3 California Department of Toxic Substances Control. This Covenant
shall be recorded by the Covenantor in the County of Santa Barbara
within thirty (30) days of the date of execution.

4 5.06 References. All references to Code Sections include
5 successor provision.

6 IN WITNESS WHEREOF, the parties execute this Covenant as of the
7 date set forth above.

8 BY Robert G. Vogel
9 ROBERT G. VOGEL P.E.
10 MANAGER OF ENVIRONMENTAL MITIGATION
11 SOUTHERN CALIFORNIA GAS COMPANY

12 Dated: November 14, 1994

13 BY Hamid Saebfar
14 HAMID SAEBFAR, CHIEF
15 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
16 SITE MITIGATION BRANCH
17 REGION 3 AND 4

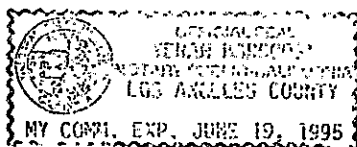
18 Dated: 11/28, 1994.

1. STATE OF CALIFORNIA)
2. COUNTY OF LOS ANGELES)

SS

3.
4. On NOVEMBER 28, 1994 before me the undersigned,
5. a Notary Public in and for said state, personally appeared
6. HAMID SAEBFAR, personally known to me or proved to me on the
7. basis of satisfactory evidence to be the person who executed the
8. within instrument as CHIEF SITE MITIGATION BRANCH, of the
9. California Environmental Protection Agency, Department of Toxic
10. Substances Control, the agency that executed the within instrument,
11. and acknowledges to me that such agency executed the same.

12. WITNESS my hand and official seal.



Hamid Saebfar
Notary Public in and for said
County and State

1 STATE OF

2 COUNTY OF Los Angeles

SS

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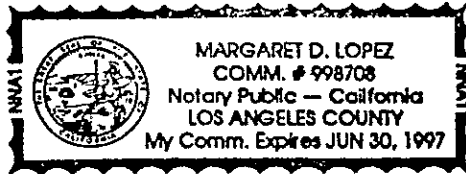
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26

27

On November 17, 1994 before me the undersigned, a Notary Public in and for said state, personally appeared Robert S. Vogel, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Manager, Emission Mitigation, of the Southern California Gas Company that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Margaret D. Lopez
Notary Public in and for said
County and State

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Los Angeles

On 11/28/94 before me, YERAN MARCOOSI

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Hamid Saebebar

NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Yeran Marcoosi

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT ☐ GENERAL
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

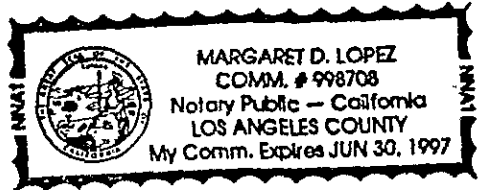
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

Date of California
County of Los Angeles
On November 17, 1994 before me, Margaret S. Lopez, Notary Public
DATE NAME, TITLE OF OFFICER - E.G. JANE DOE, NOTARY PUBLIC
personally appeared Robert A. Vogel
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Margaret S. Lopez
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

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 - ☐ TRUSTEE(S)
 - ☐ GUARDIAN/CONSERVATOR
 - ☐ OTHER: _____

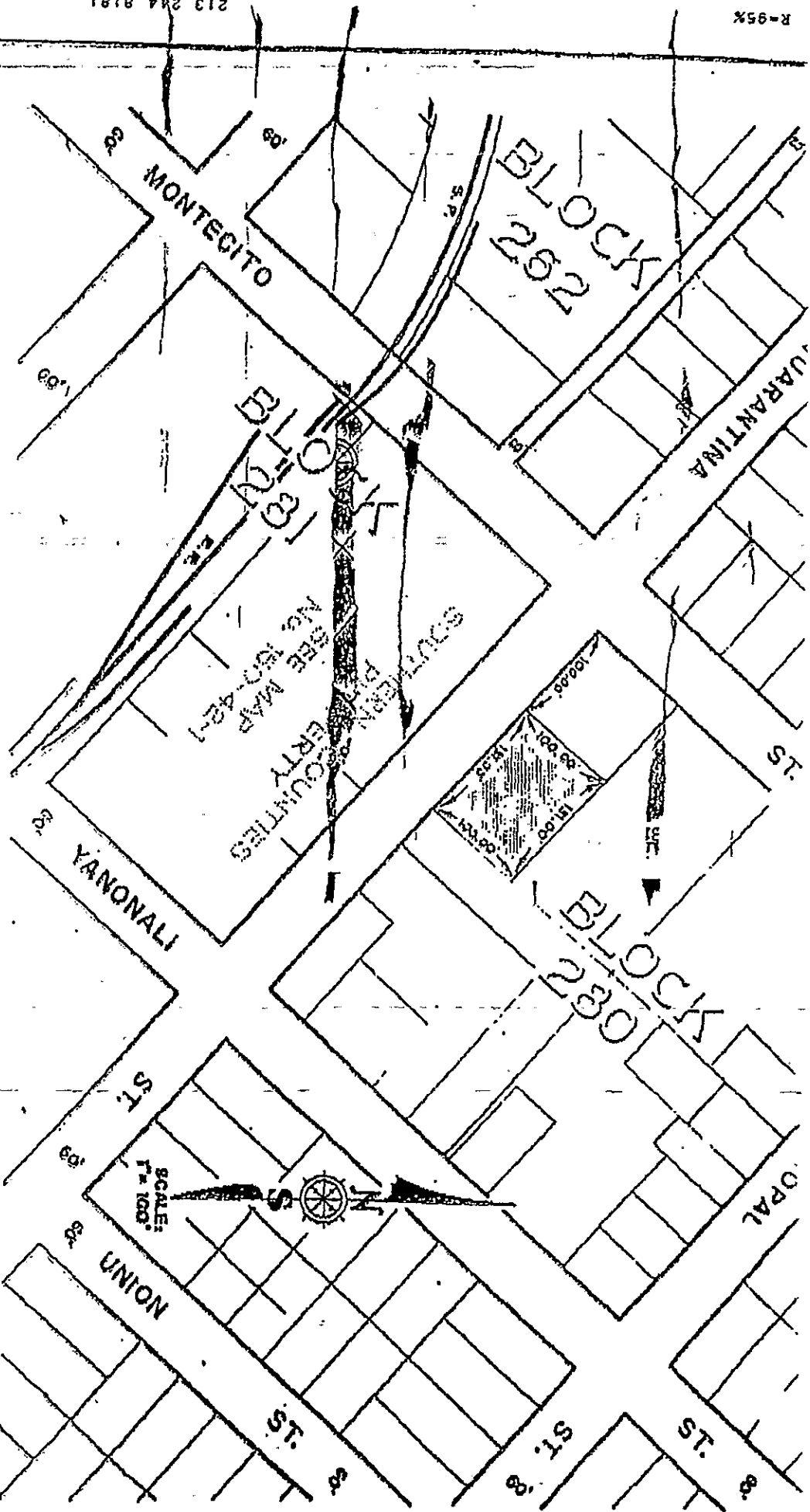
SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE



Plat showing Property, of the SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA

DESCRIPTION

This portion of Block 280 in the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

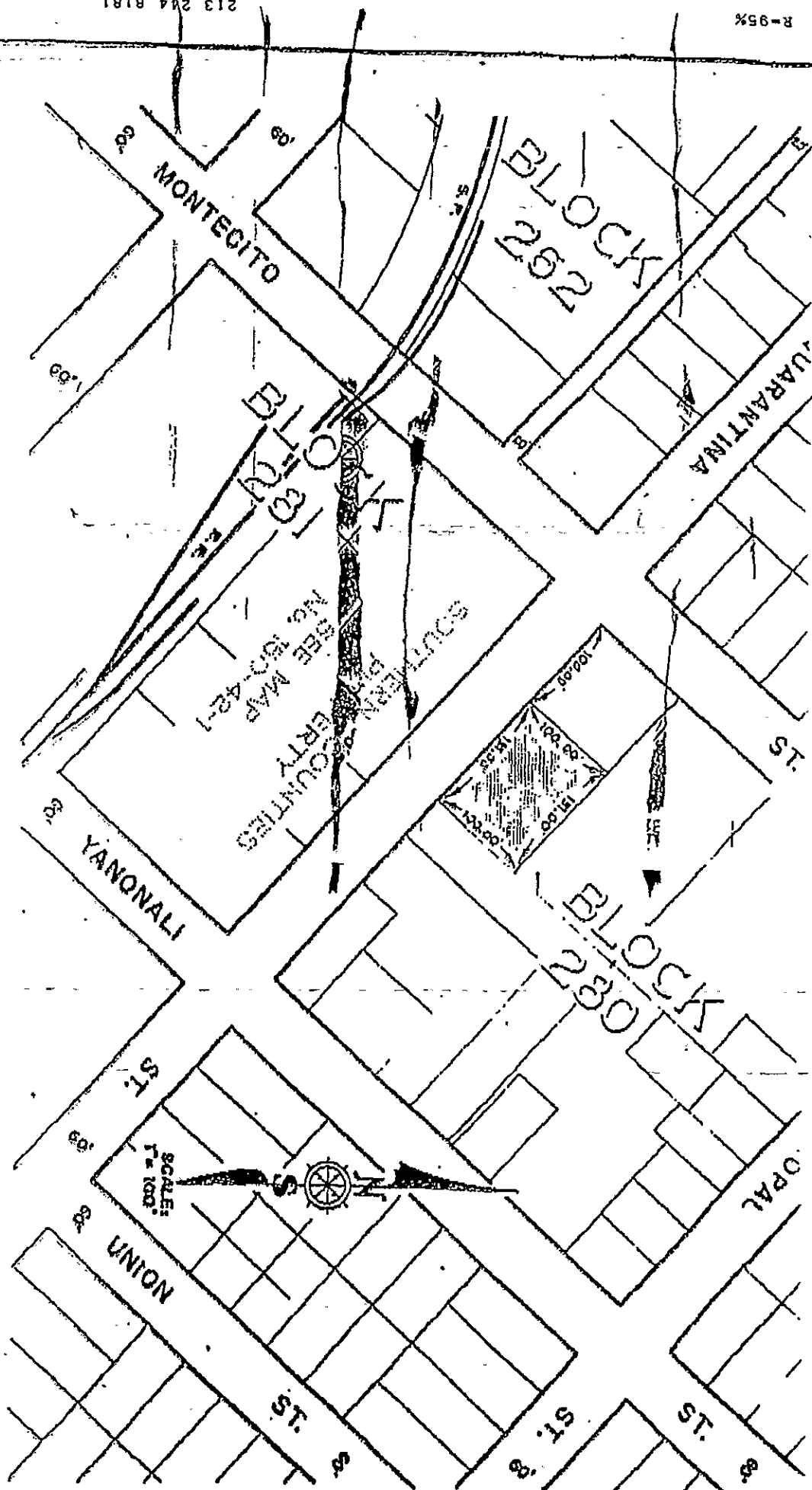
Beginning at a point on the northeasterly line of Quarantina Street, distant thereon 100 feet Southeasterly from the West corner of said block; thence at right angles Northeasterly 100 feet; thence at right angles Southeasterly 131 feet; thence at right angles Southeasterly 100 feet; to the Northeasterly line of Quarantina Street; thence Northwesterly on said line of Quarantina Street 131 feet to the point of beginning.

REFERENCES

Grant Deed from Harry C. Slocum and Maria A. Slocum to Southern Counties Gas Company of California dated June 10, 1958, and recorded June 16, 1958, in Book 1534 page 284, Official Records of Santa Barbara County, California.

Title Insurance and Trust Company Policy of Title Insurance No. 57525, dated June 16, 1958.

RECORDERS MEMO: LEGIBILITY OF WRITING, TYPING OR PRINTING UNSATISFACTORY IN THIS DOCUMENT WHEN RECEIVED.



Plat showing Property of the SOUTHERN GAS COMPANY OF CALIFORNIA

DESCRIPTION

That portion of Block 260 in the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

Beginning at a point on the northeasterly line of Quarantina Street, distant thereon 100 feet Southwesterly from the West corner of said block thence at right angles Northwesterly 100 feet; thence at right angles Southwesterly 131 feet thence at right angles Southwesterly 100 feet to the Northerly line of Quarantina Street; thence Northwesterly on said line of Quarantina Street 131 feet to the point of

REFERENCES

Grant Deed from Harry C. Stinson and Maria A. Stinson to Southern Counties Gas Company of California dated June 10, 1958, and recorded June 16, 1958 in Book 1531 page 284; Official Records of Santa Barbara County, California.

Title Insurance and Trust Company Policy of Title Insurance No. 57525, dated June 16, 1958.

EXHIBIT A